1951 K File No. O. Medical Pract 51

Legal Dept-

A. BRANCH

Subject:— Opinions under the Bombay Medical Practitioner's Act 1938.

File No. O. Medical. Pract. 151

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Legal Department

Bombay Medical Practitioners Rule, 1939.

Rule 56,58,60

Rule 56 of the Bombay Medical Practitioners Rules, 1939, provides: "The scale of fees of attendance at meetings of the Board and of the Executive Committee and the travelling expenses for such attendance shall be paid at the rate set forth in the following rules." Rule 58 provides: "Every member shall be entitled to a fee of Rs. 15/- per each day of attendance at a meeting of the Board." Rule 60 provides that the fees for attendance at meetings of the Executive Committee shall be 15 ruppes a day etc. Even if the meeting of the Board and the meeting of the Executive Committee take palce on the same day, the members will be entitled to separate fees for the two meetings. A fee is different from travelling expenses; for a fee is a sort of perquisite allowed to persons engaged in the administration as a recompense for their labour and trouble, or for particular acts or services, while travelling expenses are meant to cover the costs incurred by the member for his journey. Consequently, a member attending the Board meeing would be entitled to a fee of Rs. 15/- in addtion to a fee of Rs. 15/- which he can claim for attending the meeting of the Executive Committee, for, as stated above, what he gets by way of fees would be his compensation for the services rendered by him at the meeting of each body. But he would be entitled to one only one set of travelling expenses. The view taken by President is not correct.

O/C.

Additional Sd.

U.R. to L.S.G. & P.H.B.

R.L. No. 10,053
21/5/51

R.L.A. is requested to give correct interpretation of the words "or elsewhere" occurring in sub-section (2) of section 31C of the Bombay Medical Practitioners' Act, 1938.

Under section 31A(1) of the Bombay Medical Practitioners' Act, 1938, the Registration Tribunal is constituted for the ppurpose of fcilitating -

(i) refugees;

(ii) persons residing in the areas included in the State of Bombay under the Bombay (Enlargment of Area and Alteration of Boundaries) Order, 1947, or the Bombay (Enlargement of Area and Alteration Of Boundaries) Order, 1948, and in the area jurisidction over which has been transferred to the Government of Bombay under the Extra Provl. Jurisdiction Act, 1947, and

(iii) some other persons

to have their names in the Register or list under the provisions of this Act. Under Section 31B, the State Government shall, by notification in the Official Gazette, appoint a date on or before which application for registration or entry in the list shall be made to the Registration Tribunal. Sub-section (1) of Sect. 31C empowers the Registration Tribunal to direct the entry of the names of the refugees or persons residing in the area include/d in the State of Bombay in the Register or in the list as the case may be, in accordance with the fulfulment of the condition in rules (i) to (iii). Sub-section (2) of section 31C provides:- (Contd)

4 c.-
V.R.K.
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"The Registration Tribunal may also ..... direct the name of any other person whether residing in the Province or elsewhere, whose name has not been entered in the Register of list, but who was in the regular practice on the 4th November 1941 of any system of medicine, surgery or midwifery ..... to be entered in the Register or list, provided that such person proves to the satisfaction of the Registration Tribunal that for sufficient and adequate reasons his name cannot be entered in the Register or list."

"Elsewhere" means in another place; in any other place. The term does not always mean literally any other place whatever, but may be more or less limited by the context (See Black's Law Dictionary- page 652) "Elsewhere" is the most significant, suitable, and comprehensive word that can be used in a testamentary gift of property: thus a device of "all my lands in A and B and elsewhere" is equivalent to devise of all testator's land in A and B "or in any other place whatsoever" (Chester V. Chester 3 p. Wms61) While interpreting the words "The United Kingdom or elsewhere" in the Income Tax Act, 1853 (16 & 17 Vict Ch. 34) in Colquhoun V. Brooks, 21 Q.B.D.52, Esher M.R. said:-

"I do not think, when the Act is worked out, that "elsewhere" is meant to include any other part of the inhabited globe. There may be some outlying parts of the Queen's Dominions which are not colonies but over which the Queen exercises all sovereign rights and the words "or elsewhere" may have been inserted by way of caution to include such places etc. (Contd)

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"Elsewhere" as used in the Memorandum of an Association of a minig company declaring the object to be the purchase and working of mines etc. in the State of Missouri or elsewhere" menas elsewhere than in the State of Missouri (see Iyer's Law Lexico n P. 383). The words "whether residing in the Province or elsewhere" appear to provide also for persons who do not reside in the State of Bombay but elsewhere in any other State in India. The view expressed by the L.S.G. & P.H.D. is correct.

Sd/-
28/5

Addl Secy.

U.R. to L.S.G. & Ph H. D. No. 8453, dated 29-5-1951.

4 c.
V.R.Rk
9/7/56

Legal Department

Section 31C, sub-section (2) of the Bombay Medical Practitioners' Act, provides that the Registration Tribunal may also, after making such inquiry as may be prescribed by the Rules, direct any other person to be entered in the Register. Rule 121 of the Bombay Medical Practitioners' Rules, 1939, provides that the Registration Tribunal (hereinafter called the Tribunal) shall then refer the application both to the Mamlatdar and the medical officer of the area in which the applicant was practising on 4th November 1941 for their remarks etc. As there is no Mamlatdar or medical officer for the Greater Bombay area, the rule presumably does not prescribe such inquiry in respect of applicants residing in Greater Bombay.. Consequently, it is not necessary that the Registration Tribunal must refer the applications of the persons residing within Greater Bombay to any authority for remarks and it would be competent for the Tribunal to decide such applications on the material before them or obtained by them. There would, however, be no legal objection if the the Registration Tribunal sends such applications to the Surgeon - General and the Collector of Bombay for obtaining any information or remarks in respect of the applicants. It would, however, be advisable to amend the rule so as to make clear the legal position regarding the applicants from Greater Bombay.

O.C. Sd/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 7034, dated the 3rd May 1951.

4 c.

V.R.K.
9/7/56

Legal Department

The question raised for the R.L.A.'s consideration is whether it is legally feasible to compel the registered medical practitioners to write in full the words "Registered Medical Practitioner" instead of their abbreviated form "R.M.P." and also to mention in brackets (Ayurvedic or Unani or Homeopathic etc.,) and whether the Board can do so effectively by issuing a directive.

Section 13A of the Bombay Medical Practitioners' Act, 1938 (Bom. XXVI of 1938) provides for the powers and functions of the Board. There is no provision in this section empowering the Board to issue any directive to the Registered Medical Practitioners. Section 35A only provides that "No person shall add to his name any title, description, letters or abbreviations which imply that he holds a degree, diploma, licence or certificate as his qualification to practise any system of medicine unless (a) he actually holds such degree, diploma, licence or certificate; and (b) such degree diploma, licence or certificate is recognized etc." Contravention of this provision would be an offence punishabel under sub-section (2) of this section. Persons who write after their names 'R.M.P.' meaning thereby 'registered medical practioner' cannot be said to contravene section 35A(2). It is true however that the use of the letters 'R.M.P.' by such persons may mislead the public into thinking that these letters are a kind of medical degree or diploma conferred upon them. Under Section 13-C, "The Board and the Faculty shall also exercise such other powers and perform such other functions as may be prescribed by or under this Act or as the State

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Government may direct for carrying out the purposes of this Act." As stated above one of the purposes of the Act is to prohibit the use of letters implying a degree. Consequently, there would be no objection in issuing a directive by Government to the Board to prohibit the use of the letters 'R.M.P.' and to require the registered medical practitioners to write in full against their names 'Registered Medical Practitioner' instead of the abbreviated form 'R.M.P.' and also to state in brackets Ayurvedic, Unani etc. and to take disciplinary action against them in case of default.

O/C. Sd/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 12084, dated the 28th July 1951.

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V.R.K.
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Office of the R.L.A.

Section 31B of the Bombay Medical Practitioners Act, 1938, provides that an application for registration under the section shall be accompanied by a fee of Rs. 10/-. There is no provision in the Act for the refund of the fee, if the application is not allowed by the making of an entry. The doubt raised in the note of Dy. Secy., L.S.G.&P.H.D. is not warranted by the provisions of the Act,

O/C. Sd/-
1/8

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.,No. 12369, dated the 2nd August 1951.

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V.R.K.
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Legal Department.

In his letter No. 927/51 dated 20-7-1951, the President, Board of Ayurvedic and Unani Tibbi Systems of Medicine, Bombay, states that the Board has adopted the Code of Medical Ethics and it is applicable to the Registered Medical Practitioners and the practitioners enrolled on the List prepared under section 18 of the Bombay Medical Practitioners Act, 1938. As the provisions of sections 31A, 31B and 31C have since been inserted in the said Act by Bom. Act XXXIII of 1949, the President wished to know -

(1) Whether the Code of Medical Ethics, as it stands, would apply to those whose names are entered in the Register or in the list under section 31C of the Act;

(2) if not, whether it is necessary that the Board should make any consequential changes in the Code of Medical Ethics, or whether amendment of the Act would be necessary.

2. The Local Self Government and Public Health Department considers that it would be necessary to amend the Code only "as it mentions practitioners registered under section 16 or enlisted under section 18 of the Act. It can be amended by stating that the Code also applies to practitioners enlisted or registered under section 31C." R.L.A. is requested to advise if the view of the L.S.G. & P.H. Department is correct. (Contd)

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V.R.K.
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3. Under sub-section (1) of section 15 of the Bombay Medical Practitioners Act, 1938, subject to the provisions of this Part, and subject to any general or special orders of the Board, it shall be the duty of the Registrar to keep the Register and the list. Under sub-section (2) the Register shall be in such form as may be prescribed by rules and shall be divided into two parts, one containing the names of practitioners qualified to practise the Ayurvedic System and the other containing names of practitioners qualified to practise the Unani Tibbi System. Under section 16(1), every person who passes a qualifying examination shall, on payment of a fee of Rs. 10/- be entitled to have his name entered in the Register. Sub-section (3) of section 16 provides for the circumstances under which the board may direct that the name of any practitioners may be removed from the Register. Under section 18, the Registrar shall prepare and keep a list called "a list of persons in practice on 10th March 1938" and every person, not being a person qualified for registration under this Act or under the Bombay Medical Act, 1912, who had been in regular practice in the State on 10-3-1938 of any system of medicine etc. was entitled to have his name entered in the list on payment of Rs. 10/-. Clause (c) of section 18 provides inter alia that the provisions of section 16(3) and 17 shall mutatis mutandis apply to such list.

4. The provisions of section 31A to 31C were inserted with a view to facilitating the refugees and persons from merged State area to have their names entered in the Register or list under the provisions of this Act (section 31A(1)). Sub-section (1) of section 31C provides that the Registration Tribunal shall examine the applications received on or before the appointed date and after making such inquiry as it thinks fit shall, if the applicant is

either -

(a) a refugee, or

(b) a person residing in the area which is included in the State of Bombay etc.

direct the ~~entry~~ entry of the names to be entered on the Register or list IN ACCORDANCE WITH THE rules prescribed therein. (see also sub-section (2) of section 31C.). The words "the Register or list" apparently mean the Register or list in existence which is kept and maintained by the Registrar under the provisions of sections 15 and 18 respectively. It is therefore evident that the Act does not seek to make any distinction as between those practitioners whose names are entered in the Register or list under section 16 or section 18, as the case may be, and those whose names are entered in the Register or list in pursuance of the orders issued by the Registration Tribunal under section 31C. The provisions of sections 31A to 31C are also included in part II of the Act. The provisions of section 16(3) would, therefore, be applicable to all the practitioners whose names are entered in the Register including those whose names are registered under section 31C and those of section 18(c) would apply to all those whose names are entered in such list under section 31C. It would, therefore follow that the Code of Medical Ehics would be applicable even to the practitioners brought on the Register or list under section 31C and no amendment of the Code would be necessary.

O.C. Sd/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 14571, dated the 12th September, 195:

4 c.
V.R.K.
9/7/56

Office of the R.L.A.

Prosecution under Bombay Medical Practitioners Act, 1938.

The question in this case is whether at page 5 ante purporting to have been issued by the turstees of the Prabhuram Ayurvedic College and the Dr. Popat University of Ayurved amounts to an offence under section 35 of the Bombay Medical Practitioners Act, 1938. That section prevents any person other than a body or institution authorised under the enactments specified in this section to confer grant or issue or hold himself out as entitled to confer, grant or issue any degree, diploma or licence which is identical with or is colourable imitation of any degree, diploma or licence granted by a body or institution authorised under the various Acts referred to in the section. In the invitation card it is stated that the function was to be held to confer honour of F.P.A.C.Pranacharya. It is very doubtful that this could be held to be a degree, diploma, or licence, which is identical with or colourable imitation of any of the degrees specified in the Schedule to the Bombay Medical Practitioners Act, 1938 or in the other enactments referred to in the section. Besides it appears that the function was not held and the Institution has also ceased to exist. In these circumstances this is not a fit case for prosecution.

O/C. Sd/-
1/12

Remembrancer of Legal Affairs.

M.R.to L.S.G. & P.H.D.,No. 19305, dated the 1st December, 1951.

4 c.
V.R.K.
9/7/56